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EGYPT

Trials of Civilians in Military Courts Violate International Law
Executions Continue, No Appeal of Death Sentences to Higher Court

In a major shift of policy, the Egyptian government in October 1992 began to try in military courts civilians accused of "terrorism" offenses, bypassing the security-court system staffed by civilian judges that has been in place under Egypt's long-standing emergency law. President Hosni Mubarak said that he would use military courts "in cases that require quick measures." Since the trials started last year, the proceedings have been conducted swiftly by Supreme Military Courts sitting in Alexandria and Cairo. Sentences have been harsh. The death penalty has been imposed on a total of twenty-three men, and executions by hanging began last month. As of the date of publication of this newsletter, nine of the condemned men have been executed, including seven who were hanged on July 8, 1993.

There is every indication that, in the absence of strong international pressure, the Egyptian government will continue the trials and the executions. "I refuse to allow human rights to become a slogan to protect terrorists," President Mubarak told journalists recently. But the need for speedy trials, however compelling, does not permit a government to circumvent the protection of human rights.

Egypt's obligations under international law require that anyone convicted of a crime has the right to review by a higher tribunal. The military court trials of civilians breach this right because the verdicts and sentences of the three-judge courts, staffed by military officers, cannot be appealed to a higher court. The principle of equal justice under the law also is violated, because civilians sentenced to death by military courts are not afforded the same rights as civilians condemned to death by criminal courts, who may appeal verdicts by applying for review by the Court of Cassation, Egypt's highest appeal court. In addition, because the military is part of the executive branch of government, its justice system lacks the greater independence of the civilian judiciary.

Lawyers who have represented civilian clients before the military courts complained to Middle East Watch about the conduct of the proceedings. Among other grievances, they noted that they were afforded insufficient time to review case dossiers and to prepare an adequate legal defense. The defendants themselves claimed to have been tortured in custody. In at least one case, a defendant who was hanged in Cairo on July 8 was denied access to an attorney in the initial days after his arrest, despite repeated efforts by the lawyer to provide him with legal representation.

The Executions

Ten civilians, sentenced to death by military courts since May 1992, have been executed to date:

-- On June 13, Sherif Hassan Ahmed, who was condemned to death by the Supreme Military Court in Alexandria on December 3, 1992, was hanged in that city. He was the first Islamist militant to be executed in Egypt since April 1982, when two of the convicted assassins of President Anwar Sadat were executed by firing squad and three were hanged.*

-- On June 23, Hassan Shehata Badran was hanged in Istinaf prison in Cairo. He had been sentenced to death by the Alexandria Supreme Military Court in February 1993 for the murder of Col. Ali Muhammed Khater, a police officer. Badran was a defendant in absentia in the military court trial that began in October 1992 in Alexandria, and was wanted by authorities. He allegedly opened fire at the two policemen who came to arrest him in Alexandria on November 25, 1992. Both officers were wounded, and Col. Khater died of his injuries on December 2.

-- On July 8, seven men, all of them twenty-five years old and younger, were hanged at Tora Istikbal prison southeast of Cairo. They were sentenced on April 22 in the "Attacks on Tourism" trial before the Supreme Military Court at the Hakstep military base near Cairo.

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**On the same day, Muhammed Ali Abdel Salam al-Shahed also was hanged at Istinaf prison. He had been sentenced to death by the Alexandria military court in May 1992 for espionage, or "working in the pay of a foreign state when he lived in Austria in 1991 and 1992," as the military prosecutor put it. Judicial sources told journalists that the foreign country was Israel; the Israeli authorities denied on June 13 any relationship with Abdel Salam. This execution reportedly was the first time since Egypt's 1979 peace treaty with Israel that an alleged spy for Israel has been executed; the last such execution was in February 1978.*

Introduction: The Deadly Cycle of Violence

Egypt continues to be racked by political violence as security forces battle militants -- whom the government describes as "terrorists" -- bent on creating an Islamic state. One hundred and sixty-five people were killed between March 1992 and June 21, 1993, including thirty-nine members of security forces and sixty-five known or suspected extremists, according to statistics compiled by Agence France-Presse, the French news agency.

The extremists, many of whom are affiliated with the clandestine Islamic Group, have targeted not only members of the security forces and government officials, but also Christians (who comprise at least ten percent of Egypt's fifty-nine million people), intellectuals, and tourists (three foreign visitors have been killed since October 1992). The unrest has blemished Egypt's reputation as an island of stability in the Middle East, with devastating effects on its \$3 billion tourism industry, the major source of foreign currency.

Human rights violations committed by the state are often cited by the extremists in an attempt -- however unjustified under domestic and international law -- to defend their own violent activities and to generate public support. Middle East Watch condemns violent acts carried out by the Islamic Group and other similar organizations in Egypt. Even in armed conflict, international humanitarian law makes clear that violations by one side cannot justify abuses by another. No lesser standard should apply in the situation of internal strife in Egypt.

Recourse to Military Courts: "No Room for Extended Procedures"

The use of military courts to try Egyptian civilians began on October 26, 1992, when President Hosni Mubarak issued Decree No. 370 of 1992, which ordered that two "terrorism" cases be transferred to the Supreme Military Court in Alexandria, Egypt's second-largest city.

At a press conference last year, President Mubarak explained why he had transferred the cases to the military court. His remarks made it clear that the purpose was expedited trials: "When we referred the case to the military court, we believed that *the issue had no room for extended procedures* because it was a matter of Egyptian stability, economy and the entire Egyptian people. On this basis, I used my authority to refer the case to the Military Court, which has its just judiciary and lawyers....It is better...than resorting to illegal methods." The president emphasized that he uses his authority "only...in cases that require quick measures."¹

Earlier this year, President Mubarak said that using the military courts would "keep the civilian judiciary safe from any terrorist threats by these groups."² One senior Egyptian judge told Middle East Watch that the president's comment had merit. In security cases involving extremists accused of violence, "civilian judges are independent but most of the

judges are afraid, intimidated. They don't like to give judgments in these cases," he said in an interview in April. The judge explained that this is why such cases move slowly, have many postponements, and can drag on for two or three years.

In a reply to Middle East Watch dated June 9, 1993, the Egyptian Foreign Ministry stressed that Egypt's military court system "is rooted in the Constitution and in the law" and that the military courts are permanent and formed under the law.³ The ministry further noted that the President of the Republic "has the power to transfer a crime or related crimes to military jurisdiction, after its/their occurrence, and in light of its/their circumstances and the degree of danger associated with it....[H]e undertakes each case by determining what is appropriate, and he decides for transferral in light of objective measures and standards that are tied to the public interest at its highest level, in order that the rights of the citizens not be trespassed, their liberties infringed upon, or their security -- which is guaranteed under law -- compromised."⁴

The Foreign Ministry's reply also noted the types of cases that have been transferred to the military courts. "All cases that have been turned over to the military courts for decision, according to the stipulations of Egyptian law, are cases that involve terrorist groups that have committed the crimes of killing and harming public property, especially when committed on the strength of extremist beliefs," the ministry said. "In press conferences in front of the national and international media, the accused announced that they were proud of the terrorist crimes they had committed. These announcements were made before and during the trial. They threatened to commit them again. Despite this, the court still found a large number of them innocent."

The Alexandria Trials of 1992

The first accused civilian "terrorists" tried in the military court system were the forty-eight defendants in the two cases heard by the three-judge Supreme Military Court in Alexandria.⁵ On December 3, 1992, the court handed down judgments in both cases and sentenced eight men to death, seven of them *in absentia*. Sherif Hassan Ahmed, the only defendant who was in custody, was hanged in Alexandria on June 13, 1993.

The defendants in both cases were accused of founding illegal organizations that used terrorism to achieve their objectives. In one trial, the twenty-two defendants were known as "The Assassination Group." The twenty-six defendants in the second trial were called "The Returnees from Afghanistan" because the military prosecutor charged that the men had received military training to carry out terrorist operations in camps in Afghanistan.

In the "Assassination Group" trial, which began on October 29, 1992, the military prosecutor charged that three of the twenty-two defendants had, between March and August 1992, "formed and organized a group that was tasked to urge annulment of the provisions of the Constitution and law and to prevent the authorities from conducting their duties."⁶ They also were charged with "repudiating the head of state and society and executing terrorist acts against the police corps and installations" and using terrorism as "one way of their means of obtaining their objectives. They possessed firearms, weapons, and the group members were trained to use weapons." According to MENA, the Egyptian government news agency, "[t]he charge included the rest of the defendants, each according to the degree of his involvement."⁷

The second trial, of the "Afghan returnees," began on November 5, 1992. The military prosecutor charged the twenty-six defendants with "using terrorism as a means to suspend the provisions of the Constitution and the laws, undermining social peace, assassinating officials, forging official documents, and forging the Defense Ministry's seal to carry out their terrorist plans."⁸

Complaints of Defense Lawyers

Defense lawyers opposed in principle the trials of civilians before a military court.⁹ "No lawyer who respects himself has any confidence in these military courts, but the lawyers felt obliged to be present for their clients," one well-known Egyptian law professor told Middle East Watch. "Every lawyer complained about the short amount of time. These courts are not composed of independent judges, and the trials were not fair. These were not real trials, but were like a theater, a comedy. One of the government's aims here is to have short trials, get judgments quickly, and leave the accused with no way to fight against the sentence. The sentences are needed to send a message to deter others."

Lawyers who represented the defendants in the two trials complained about the lack of sufficient time to study and analyze the charges, read the voluminous case files, identify and bring witnesses, and otherwise mount a proper legal defense. Attorney Montasir al-Zayyat noted that the lawyers were denied access to specialists who were involved in documentation of the evidence. "We asked to speak to the specialists who had prepared the report on explosives, but we were not allowed," he said in an interview with Middle East Watch in April. He also charged that the forensic medical doctor who handled the torture complaints of the defendants was the wife of an army general. "The doctor making up the reports was Anhar, the wife of a general, so we asked that she be replaced but they refused," al-Zayyat said.

Middle East Watch provided the Egyptian government with a copy of the lawyers' specific allegations and asked for a response. The Foreign Ministry's twenty-three-page reply, dated June 9, 1993, did not dispute or counter the complaints of the lawyers noted above.

The Supreme Military Court handed down verdicts and sentences in both cases on December 3, 1992. Eight defendants were sentenced to death, seven of them *in absentia*.¹⁰ Thirty-one others received prison terms (four of them sentences of life imprisonment), and the remaining nine men were acquitted. *The Washington Post* reported that "[t]he men sentenced to death were not charged with specific acts of violence but with planning the overthrow of the government and the assassination of some leaders."¹¹ A prominent Egyptian analyst, Nabil Abdel-Fattah of Al-Ahram Center for Political and Strategic Studies in Cairo, noted that the Islamic Group believes that Sherif Hassan Ahmed, who was hanged in June, was "wrongly executed. [The Islamic Group] says he had not confessed to any crime punishable by death, nor committed any sin which he deserved to hang for."¹²

The "Attacks on Tourism" Trial: March-April 1993

In March 1993, the government decided to refer an entire category of cases to military courts. The official news agency reported on March 5 that "[a]ll the terrorists involved in strikes against tourism and attacks against tourists will be referred to a military court to guarantee a swift settlement of the cases and deterrent sentences in line with their crimes, which undermined the country's economy and security."¹³

On March 9, 1993, proceedings opened in the first "tourist terrorism" case before the Supreme Military Court at the Hakstep military base, located about 30 kilometers northeast of Cairo.¹⁴ Forty-nine civilian defendants (six of them *in absentia*) were accused of "plotting to overthrow the government, organizing a banned group, attacking tourists to damage tourism and the economy, and illegal possession of arms."¹⁵

Seven defendants, who were to be condemned to death by the court and executed on July 8, additionally were charged with six specific gun and bomb attacks on tourist buses and a cruise ship on the Nile. On the opening day of the trial, one of the defendants, Hisham Abdel-Zaher, "said that [the Islamic Group] had killed Egyptian president Anwar Sadat in 1981, parliament speaker Rifaat Mahgoub in 1990 and anti-fundamentalist writer Farag Foda last year, and would continue its attacks."¹⁶

Complaints of Defense Lawyers

As in the Alexandria military court trials, defense lawyers again cried foul. "The case was a complete transgression of the judicial process," attorney Abdel Haris Medani told Middle East Watch in an interview in April. "The reports of the prosecution's eyewitnesses were withheld from the defending lawyers until after the first session." The prosecution used evidence "that had not even been seen by professionals," Medani also claimed. Describing the trial as a "fiasco," *The New York Times* reported: "Mocking court officials, prisoners pull up their robes to show scars they say were caused by electric shocks and beatings."¹⁷ (See below, for allegations concerning the torture in custody of four of the defendants.)

"The trial lacked even the most minimal guarantees," said Montasir al-Zayyat, who represented the seven youths who were sentenced to death. "There were 4,200 pages of reports, so we asked for more time to read them, but the court wanted to continue. So we temporarily withdrew from the case to discredit the court," he told Middle East Watch. Al-Zayyat said that the lawyers told the court that they would be returning, but that the court brought in "its own lawyers" and prevented the original defense attorneys from cross-examining the prosecution witnesses on April 15.

On April 15, according to Medani, the lawyers were denied access to the court. He and other lawyers waited from 9:30 a.m. until 12:30 p.m. in front of the gates that blocked the long road leading to the court. "I got there at 10:00 a.m.," defense attorney Abdel Halim Mandour told Middle East Watch in an April interview. "They said that I had to wait for a bus to take me but that there were no buses now." He told the guards that he had his own car and they said that a car was not allowed. He offered to walk, but the guards told him that it was too far a distance. "I waited until 12:30, but the bus never came," Mandour said.

The Government's Version

For its part, the official government news agency reported a different version of events and emphasized that defense lawyers' demands were accommodated by the court. MENA reported that the case files were only 2,000 pages, and stressed that the court postponed sessions to allow time for lawyers to read the documents. At the second session of the trial, on March 13, MENA said that the court met for only twenty minutes and adjourned until March 20 "to give the defendants' lawyers more time to examine the dossier of the case, which includes over 2,000 papers."¹⁸ The third session of the trial was held on March 20, and, according to MENA, the next day the court recessed the trial until March 29 "to complete the files on the case and to enable the defense to read them."¹⁹

MENA reported that on March 29 the original team of defense lawyers walked out of the courtroom, "claiming that they were engaged in other cases and that they were not given enough time to present their defense in the case."²⁰ The news agency said that on March 30, twelve new lawyers were brought in, but "[t]he defendants said they insist on being represented by the original lawyers." According to MENA, "the Court president stressed that all defense guarantees for them will be ensured and that the law requires the presence of lawyers to defend them, because they are accused of murder, possession of weapons and ammunition, and membership in an unlawful organization that sought to overthrow the regime."²¹

As with defense lawyers' complaints about the Alexandria trials, Middle East Watch provided copies of the lawyers' specific allegations to the Egyptian government for comment. The Foreign Ministry's reply to Middle East Watch, dated June 9, 1993, did not address the complaints of the lawyers noted above.

The Court's Sentences

The trial concluded on April 22, with seven defendants (and another *in absentia*) sentenced to death.²² The seven condemned men in custody were hanged on July 8, 1993 at Tora Istikbal prison, southeast of Cairo. Two of them were students, one of whom was eighteen years old.

Three of the defendants (including lawyer Badri Maklout Husayn) were sentenced to life imprisonment, twenty-two received prison terms ranging from two to fifteen years, and seventeen defendants were acquitted, including lawyers Radwan al-Tuni Ibrahim Muhammed and Mustafa al-Sayyid Husayn Abd-al-'Al.²³

Denial of Due Process to Two of the Executed Defendants

In February 1993, sources in Assyt, the largest city in Upper Egypt, told Middle East Watch that lawyers Radwan al-Tuni and Mustafa al-Sayyid, two of the defendants in the trial, had been falsely accused, and that adding their names to the list of defendants was designed to "create a sense of terror and fear among lawyers defending political cases."²⁴ As noted above, the military court acquitted both lawyers. The alleged treatment by authorities of Radwan al-Tuni, who is from Assyt and chairs the civil liberties committee of the bar association there, is cause for serious concern, as is the allegation that attorney al-Sayyid was tortured in custody.

According to testimony taken by Middle East Watch in Assyt, al-Tuni had doggedly tried to provide legal representation for Sa'd Amin Abu-al-Majd Muhammed, the twenty-three-year-old driver who was sentenced to death by the court and hanged on July 8, in the initial days after his arrest in November 1992. The lawyer's efforts were unsuccessful. Instead, he found himself added as a defendant in the trial.

The first suspect in the case, eighteen-year-old Bastawi Abd-al-Magid Abu-al-Sa'd, reportedly was apprehended at the scene of the attack on a tourist bus in Qena, a town south of Assyt, on November 12.²⁵ "Two or three days after the attack, they picked up Sa'd," an Assyt lawyer told Middle East Watch. "These two did not have lawyers with them during the prosecutor's investigation, even though this is an essential guarantee. The prosecutor conducted the investigation at night, in a secret manner."²⁶ (It is worth noting here that Amnesty International reported that defendants in the military court trials in Alexandria in 1992 also were denied legal representation when first questioned by the prosecutor.²⁷)

Bastawi, a secondary school student from the village of Hujayrat near Qena, was tortured after he was apprehended, according to the lawyer. He then was brought before the prosecutor at 2:00 a.m. the next day: "Even though Bastawi looked very tired, the prosecutor insisted on conducting the investigation. Bastawi fainted during the investigation. The prosecutor had officers pour cold water on his head. He was forced to confess," the Assyt lawyer said.²⁸ After the confession, Bastawi was moved to Sohag prison, north of Qena.

Lawyer Radwan al-Tuni visited Bastawi in the prison, where he first heard the youth's account of what had transpired after his arrest. Al-Tuni also travelled to the prosecutor's office in Qena, where he sought to provide legal representation for Sa'd, the second suspect. "Radwan asked the head of prosecution to let him be present during the investigation, but he was told that there were no investigations that day. Radwan then asked for the case number, so he could make a formal request to be present when Sa'd was investigated. He was that told the case had no number, which is not true because every case is assigned a number. Radwan told them that it was impossible that the case did not have a number," the lawyer told Middle East Watch.

Al-Tuni was not deterred. He positioned himself in front of the room where suspects are held before they are brought for investigation. When Sa'd appeared, al-Tuni was told that the investigation had been postponed. Al-Tuni did not leave, but continue to wait. "The police took Sa'd out of the waiting room, and then back inside through another door," the lawyer said. "Radwan persuaded a soldier stationed in front of the door to the investigation room to ask the secretary about Sa'd's proceeding." The secretary told the soldier that the investigation would take place "after the lawyer leaves. Don't tell the lawyer." The soldier, however, did inform al-Tuni.

Sa'd had been tortured in State Security Investigation (SSI) custody before he was brought to the prosecutor, according

to the lawyer. "Sa'd said that there were SSI officers with him inside the investigation room, and he confessed to the prosecutor out of fear." Sa'd Amin Abud-al-Majd Muhammed was hanged on July 8, 1993.

Mistreatment and Torture of Two of the Defendants, Both Lawyers

Radwan al-Tuni himself was arrested on December 5, 1992, while he was walking out of the courthouse in Assyut with other lawyers. The group was surrounded by security forces, who took out their guns, chased the other lawyers away, and arrested al-Tuni. He was brought to the SSI office in Assyut and held overnight, then transferred to the Assyut police station for two days, and moved to the Central Security Forces paramilitary camp for one day. From there, he was transferred to Tora Istikbal prison near Cairo, where he was held for about twenty days.^{[29](#)}

From the prison, al-Tuni was brought to Lazoughly, SSI headquarters in Cairo, where one lawyer (who visited him in prison after he was returned from SSI headquarters) told Middle East Watch that "he was treated badly to get him to confess to taking messages and money between the prisons and the outside." The lawyer said that he had been unable to obtain details about al-Tuni's mistreatment "because when I visited him at Tora Istikbal, an investigations officer sat between us for the entire visit. The officer was writing down every word we said. When we were saying goodbye, Radwan whispered that he had been subjected to very bad treatment at Lazoughly."^{[30](#)} From Lazoughly, al-Tuni was brought before the state security prosecutor, who ordered his detention for fifteen days, following the expiration of his thirty-day detention order under the emergency law. Al-Tuni then was moved to the men's prison at Qanater, northwest of Cairo, and finally back to Tora Istikbal.

Before al-Tuni's own arrest, he had visited in prison Mustafa al-Sayyid, another lawyer and defendant in the trial who was acquitted by the military court in April. During this visit, al-Tuni learned that al-Sayyid had been tortured. Al-Sayyid was held at SSI's Cairo headquarters for approximately twenty-five days after his arrest. According to an Assyut lawyer interviewed by Middle East Watch:

He was blindfolded the entire time and tortured. They threatened to rape his wife. He was interrogated for sixteen hours a day. They took turns. He was naked and was forced to stand, while blindfolded. He was electric-shocked and beaten. After that, he was brought to Tora Istikbal, where Radwan visited him and learned what had happened.^{[31](#)}

The allegations are consistent with SSI torture methods documented by Middle East Watch.^{[32](#)} On December 12, al-Sayyid's detention order expired, and he was brought to the state security prosecutor. "He was added to the [attacks on tourism] case [as a defendant], even though he was in detention at the time of the tourist bus attack in Qena," the lawyer told Middle East Watch.^{[33](#)}

Military Court Trials Continue, More Death Sentences Handed Down

There is every indication that, in the absence of strong international pressure, the Egyptian government intends to continue trying civilians before military courts, and swiftly carrying out the executions of those condemned to death, in the apparent hope that the harsh punishments will have a deterrent effect on the level of political violence. "I refuse to allow human rights to become a slogan to protect terrorists," President Mubarak said recently.^{[34](#)}

On May 8, 1993, another trial opened before the Supreme Military Court at Hakestep. Fourteen civilian defendants, four *in absentia*, were accused of involvement in the April assassination attempt against Information Minister Safwat el-Sharif and other acts of violence.^{[35](#)} Minister el-Sherif was slightly injured in an attack on April 20 in broad daylight outside his Heliopolis home in Cairo; his driver and his bodyguard suffered more serious injuries. The Islamic Group claimed responsibility.

On May 15, the court decided to continue the trial *in camera*. The government news agency reported that "[t]he decision came in compliance with the request of the military prosecution which said that sittings held in secret would preserve the public order especially as some [news]papers published untrue news about the case."³⁶ The French news agency Agence France-Presse (AFP) reported on the trial session that day:

As the hearings started, the ten defendants...voiced outrage at General Ahmad Abdallah, the presiding judge, calling him a "butcher" and an "assassin." Led by key defendant Hasan Abdallah Shalaqani, the militants also launched a violent verbal attack against [President Hosni] Mubarak from their separate iron cages. "We don't recognize Hosni Mubarak or his laws. We only recognize *sharia* (Islamic law)," they shouted. Some defendants also charged they had been tortured during interrogation by the security forces.

The judge then adjourned the court, and banned journalists. According to AFP, the trial "resumed behind closed doors at midday after the judge ejected journalists and ordered the evacuation of the suspects."³⁷

On May 27, the court sentenced six of the defendants to death, one of them *in absentia*.³⁸ President Mubarak ratified the death sentences on June 12. Two defendants received life sentences with hard labor, and another defendant was sentenced to ten years of hard labor. Two of the accused were acquitted. Charges were dismissed against threedefendants (all of them tried *in absentia*) because "their lawsuit was not filed in conformity with the law," the government news agency reported, and then named these defendants as Ashraf, Mustaf and Idris.³⁹ But according to *The New York Times*, the charges were dropped "after security forces could provide the court only with their first names."⁴⁰

On June 26, the trial of thirty-two defendants (three *in absentia*) began before the Supreme Military Court sitting in new facilities in the Jabal al-Ahmar military region of Cairo. The defendants are accused of acts of violence in 1992 in Cairo and Fayoum, a city south of the capital. Nine are accused of killing three people during armed robberies of Christian-owned jewelry shops and one policeman outside a metro station in Cairo, and attempted murder of nine others, including a police officer. All of the defendants are accused of illegal possession of weapons, and having formed an illegal organization which spreads instability with the aim of suspending the Constitution, undermining national unity, and overthrowing the government.

Violations of International Law

Egypt's obligations under international law require that anyone convicted of a crime has the right to review of the conviction and sentence by a higher tribunal.⁴¹ The Egyptian government has violated this right by trying civilians, accused of "terrorism" offenses, before three-judge Supreme Military Courts, whose decisions cannot be appealed to a higher court. The right to an appeal is especially important in light of the severity of the punishments that have been imposed on civilian defendants, including the death penalty, life imprisonment, and long terms of hard labor.

Military courts--even when staffed by legally qualified judges, as they are in Egypt--do not afford civilian defendants full due-process rights before an independent tribunal. The Egyptian military is part of the executive branch of government, and thus its judicial system lacks the greater independence of civilian courts.

No Review of Death Sentences by Appeal Court

In addition, civilians tried before military courts for terrorism offenses and sentenced to death are not afforded the same rights as civilians condemned to death by civilian courts. In Egypt, the death penalty imposed by a criminal court may be appealed by applying for review by the Court of Cassation, Egypt's highest appeal court.⁴²

Under Egyptian law, the Department of Public Prosecutions must submit any death sentence, after it has been presented to the convicted individual, to the Court of Cassation "for verification of the proper application of the law," even if the condemned person does not appeal the sentence. In cases of death sentences handed down by military courts, there is no review by the Court of Cassation.

The Egyptian government has stressed that safeguards are in place for appeal of a military court's ruling. In its reply to Middle East Watch, the Foreign Ministry noted that military court rulings are "reviewed by the most experienced legal officers, and the defendant is permitted to present any notes he wishes to submit before the ruling is approved."

The ministry also said that after the approval of a sentence, there is a fifteen-day period in which to appeal. But it did not explain the nature of this so-called appeal. "The defendant has the right to make a petition to the Minister of Defense or to the chairman of the Department of Military Courts, but the case will never be reviewed by the Court of Cassation," a prominent Egyptian judge told Middle East Watch in April 1993. He stressed that a petition to the Defense Minister -- a government official -- could in no way be considered a substitute for an appeal to an independent judge.

In addition, Egypt is in violation of international standards governing the application of the death penalty. These are set forth in the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, approved in May 1984 by the United Nations Economic and Social Council.⁴³ Article 6 of this document states:

Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

The civilians executed, and those awaiting execution, have not been afforded the special protection set forth in this important international standard. Principles of equality and fairness mandate that those sentenced to death should be granted at least the same opportunities of appeal to a court of higher jurisdiction as those sentenced to death by criminal courts in Egypt.

Recommendations

To The Egyptian Government:

Middle East Watch calls on the Egyptian government to adhere to the provisions of the International Covenant on Civil and Political Rights, which it has ratified, and to other relevant international standards pertaining to fair trials, basic principles of justice, and protection of the rights of those facing the death penalty. We call on President Hosni Mubarak to:

- * Commute the death sentences that have been imposed on civilians by military courts.
- * Immediately suspend the practice of trying civilians in military courts.
- * Take immediate steps to ensure that all civilians tried in Egypt have the right to appeal their convictions and sentences to a higher tribunal in legal proceedings that include full due-process rights.
- * Order the Ministry of Interior immediately to cease the practice of incommunicado detention, and to establish standard procedures for access of attorneys and family members to detainees promptly after arrest.

- * Ensure that detainees under investigation by state security prosecutors have legal representation during investigative proceedings, and instruct all prosecutors promptly to inform detainees under investigation that they are entitled to legal representation.
- * Permit any detainee held in the custody of the General Directorate of State Security Investigation (SSI) to obtain the presence of a lawyer, or a state-appointed attorney, during all interrogation sessions.
- * Publicly acknowledge that torture is practiced systematically by Egyptian security forces, order its immediate cessation, and implement measures to ensure that this order is carried out.
- * Direct SSI immediately to institute a permanent record-keeping system at every SSI office in Egypt where detainees are held for investigation and interrogation. These records must be made easily available to detainees' lawyers and to prosecutors charged with investigation of torture complaints.

To the Clinton Administration:

- * Publicly condemn the trials of civilians in military courts and the execution of defendants sentenced to death by these courts.
- * Undertake vigorous diplomatic representations, in Washington and Cairo, to persuade the Egyptian government to suspend the trials of civilians in military courts and to commute those death sentences that have been handed down but not yet carried out.
- * Assign diplomatic staff based in Cairo to be present at trials of civilians before military courts, and make it known publicly that the presence of diplomats at the trials is an act of protest.
- * Remind the Egyptian authorities that U.S. aid to any country is prohibited if the government of that country engages in a pattern of gross abuses. Egypt's long-term practices of torture and prolonged detention without charge or trial should be raised in this context, including reports of torture emerging from the interrogation of civilians later tried in military courts.
- * Call on the Egyptian government to adhere to its commitments under international law, and to undertake immediate measures to improve its human rights performance. In addition to administration of justice issues, top priority must be given to ending the practices of incommunicado detention and the blindfolding and torture of detainees and security suspects held in SSI custody.

To the European Community:

- * Publicly condemn the trial of civilians in military courts, and the execution of defendants sentenced to death by these courts.
- * Utilize vigorous diplomatic and public pressure to persuade the Egyptian government to suspend the trials of civilians in military courts and to commute those death sentences that have been handed down but not yet carried out.
- * Assign diplomatic staff based in Cairo to be present at trials of civilians before military courts, and make it known publicly that the presence of diplomats at the trials is an act of protest.

* Call on the Egyptian government to adhere to its commitments under international law, and to undertake immediate measures to improve its human rights performance. In addition to administration of justice issues, top priority must be given to ending the practices of incommunicado detention and the blindfolding and torture of detainees and security suspects held in SSI custody.

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This newsletter was written by Virginia N. Sherry, associate director of Middle East Watch. It was edited by Cynthia Brown, a consultant to Human Rights Watch.

Middle East Watch has monitored human rights conditions in Egypt since 1990, and has issued the following book-length reports, newsletters and other documents:

Egypt: Election Concerns (November 1990)

Egyptian Authorities Clamp Down on Dissent (February 1991)

Government Moves to Dissolve Prominent Arab Women's Organization (September 1991)

Update: Dissolution of the Arab Women's Solidarity Association (December 1991)

Torture in Egypt: A Personal Statement by Dr. Muhammed Mustafa Mandour (December 1991)

Egypt: Events of 1991, in *Human Rights Watch World Report 1992* (December 1991)

Egypt: Arrest and Detention Practices and Prison Conditions (March 1992)

Court Uphold Closure of Women's Organization (June 1992)

Behind Closed Doors: Torture and Detention in Egypt (July 1992)

Egypt: Events of 1992, in *Human Rights Watch World Report 1993* (December 1992)

Prison Conditions in Egypt (February 1993)

MEW Protests to Egypt's Interior Minister About "Atmosphere of Intimidation" (March 1993)

Free Expression, Rule of Law Imperiled in Egypt (July 1993)

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Middle East Watch was created in 1989 to monitor human rights practices in the Middle East and North Africa and to promote respect for internationally recognized standards. The chair of Middle East Watch is Gary Sick, the vice chairs are Lisa Anderson and Bruce Rabb. Andrew Whitley is the executive director; Eric Goldstein is the research director; Virginia N. Sherry and Aziz Abu-Hamad are associate directors; Suzanne Howard is the associate.

Middle East Watch is a division of Human Rights Watch, a non-governmental organization which is also composed of

Africa Watch, Americas Watch, Asia Watch, the Fund for Free Expression and Helsinki Watch. The chair of Human Rights Watch is Robert L. Bernstein, the vice chair is Adrian W. DeWind, the acting executive director is Kenneth Roth, the associate director is Gara LaMarche, the Washington director is Holly J. Burkhalter, and the press director is Susan Osnos.

1 Cairo ESC TV, December 16, 1992, as reported in Foreign Broadcast Information Service, *Near East and South Asia Daily Report* [hereinafter FBIS], December 17, 1993, p.11. Emphasis added.

2 Interview with the Kuwait newspaper *al-Siyasah* reported by the Egyptian government news agency MENA (Middle East News Agency), April 2, 1993, as reported in FBIS, April 2, 1993, p. 9. In the same interview, President Mubarak also said: "Using a military court is in line with the Egyptian people's desire to speed up deterrents against those who tamper with the people's lives and livelihood."

3 "Article 183 of the Constitution stipulates that the law organize a military court system and determine its characteristics in accordance with the principles of the Constitution....In accordance with the law, there are three types of [military] courts. One is the Supreme Military Court [*al-mahkamah al-'askariyya al-'ulyaa*]. This court specializes in reviewing crimes and each of its tribunals is composed of three judges. The most senior among them presides, and they are independent, deferring to no authority other than their consciences and the law. No state authority can intervene in their jurisdiction, according to the principles laid down in the Constitution, since this is necessary for the organization of military jurisdiction," the Foreign Ministry wrote to Middle East Watch. (MEW translation of the original Arabic.)

4 The power of the president to transfer cases to military courts is derived from Article 6 of the Law of Military Rulings (No. 25 of 1966), and amended by decree with Law No. 5 of 1971, according to the Foreign Ministry.

5 The presiding judges were Maj. Gen. Ahmad Abdallah, the president of the court, and Maj. Gen. Ali Hamzah and Col. Faisal Haybah. The military prosecutor was Col. al-Sayyid Muhammad Hammudah.

6 MENA, November 1, 1992, as reported in FBIS, November 2, 1992, p. 12.

7 *Ibid.*

8 MENA, November 18, 1992, as reported in FBIS, November 19, 1992, p.13.

9 Defense attorney Abdel Halim Mandour filed suit in Egypt's administrative court system, known as the Conseil D'Etat, challenging the president's decree to refer the two cases to the military court. Mandour argued that the defendants should be tried in the civilian state security court and that President Mubarak's decree was unconstitutional.

On December 7, 1992, the administrative court "issued a ruling suspending the implementation of the president's decision [and]...the consequences that arose from the presidential decision....As a result of the court's ruling, the sentences issued by the military court were suspended until the matter is settled as to whether a military or an ordinary court should try the accused." (Al-Ahram Press Agency, December 8, 1992, as reported in FBIS, December 9, 1992, p. 17.)

The government then appealed the administrative court's decision to the Supreme Administrative Court of the Conseil d'Etat, and also requested an interpretation from the Supreme Constitutional Court. In January 1993, the Constitutional Court ruled that under Article 6 of the military law the president has the right under Egypt's emergency law to place any case before a military court. A prominent Egyptian jurist, who personally is opposed to the use of military courts to try

civilians, told Middle East Watch in April 1993: "Our legal system gives the president the right under the state of emergency to put any case before the military courts."

On May 23, 1993, the Supreme Administrative Court of the Conseil d'Etat ruled as well that the president has the power under a state of emergency to refer any crime to the military judiciary. The government news agency reported: "In the details of its ruling, the court pointed out that the ruling of the administrative judiciary, which the Supreme Court annulled, violated the rudimentary rules for interpreting military court laws and that the [Conseil d'Etat's] law binds all courts operating within its jurisdiction with the principles the Supreme Court decides and prevents these courts from violating them." (MENA, May 23, 1993, as reported in FBIS, May 24, 1993, p. 12.)

10 They are Sherif Hassan Ahmed, and the following sentenced *in absentia*: Muhammed Shawqi al-Islambuli, Mustafa Mazzih, Rifa'i Musa, 'Uthman al-Samman, Ahmad Nawawah, Tal'at Hammam, and Fu'ad Qasim. (MENA, December 3, 1992.)

11 "Egypt Sentences Muslim Militants," *The Washington Post*, December 4, 1992.

12 "Who are the mystery bombers?" *Al-Ahram Weekly*, July 1-7, 1993.

13 MENA, March 5, 1993, as reported in FBIS, March 5, 1993, p. 10.

14 The judges were Maj. Gen. Muhammed Wajdi al-Laythi, the president of the court, and Brig. Gen. Hamid Sayyid Hasan and Col. Muhammed Shamil Ramzi. There were three military prosecutors, led by Brig. Gen. Ali Baybars.

15 Reuter, as reported in *Mideast Mirror*, April 22, 1993, p. 20.

16 Reuter, *The Washington Post*, March 10, 1993.

17 Chris Hedges, "Egypt's War With Militants: Both Sides Harden Positions," *The New York Times*, April 1, 1993.

18 MENA, March 13, 1993, as reported in FBIS, March 17, 1993, p. 19.

19 MENA, March 21, 1993, as reported in FBIS, March 23, 1993, p. 23.

20 MENA, March 30, 1993, as reported in FBIS, March 31, 1993, p. 11.

21 *Ibid.*

22 The Egyptian government news agency listed the names and professions of the condemned men as follows: Bastawi Abd-al-Majid Abu-al-Sa'd, an 18-year-old secondary school student; Sa'd Amin Abu-al-Majd Muhammad, driver; Ashraf Sa'id Abd-Rabbuh, student at the higher commercial institute; Drawi Muhammad Ibrahim Abd-al-Muttalib, unemployed; Ahmad Abd-al-Rahim Radwan, vegetable merchant; Abd-al-Had al-Saghir, graduate of a commercial school; and Abd-al-Hami al-Zamqan, a painter. (MENA, April 22, 1993.)

23 MENA, April 22, 1993, as reported in FBIS, April 23, 1993, p. 18.

24 Egyptian security authorities harassed lawyers in Upper Egypt who had contact with Middle East Watch earlier this year, and also put pressure on a prominent Egyptian human rights monitor who travelled with Middle East Watch in

Upper Egypt in February 1993. See Middle East Watch, "MEW Protests to Egypt's Interior Minister About 'Atmosphere of Intimidation,' Calls for a Halt to Harassment of Human Rights Monitors and Lawyers," March 15, 1993.

25 There were no fatalities in the attack, but five German tourists were wounded.

26 MEW interview, Assyut, February 1993.

27 "The defendants were referred to the [prosecutor] without the lawyers being informed, and were therefore not present during the initial questioning." (Amnesty International, Urgent Action Appeal, UA 24/93, February 1, 1993.)

28 Egyptian government newspapers at the time of Bastawi's arrest said that "[he] was caught with an automatic rifle, and said he had been promised \$1,500 to cover those who fired on the bus," according to *The Washington Post*. The *Post* added: "In a recent interview, [Bastawi's] family said [he] prayed at an Islamic Group mosque in [Hujayrat] but had not been involved in violent activity." (Caryle Murphy, "Egypt Executes 7 Islamic Militants," *The Washington Post*, July 9, 1993.)

29 Hundreds of suspected Islamist militants have been held without charge at this prison, some of them for over three years. For additional information, see Middle East Watch, *Prison Conditions in Egypt* (Human Rights Watch: February 1993).

30 MEW interview, Assyut, February 1993. Middle East Watch has documented the torture of detainees held incommunicado at Lazoughly and other SSI offices in Egypt. See *Behind Closed Doors: Torture and Detention in Egypt* (Human Rights Watch: July 1992).

31 MEW interview, Assyut, February 1993. This lawyer had learned the details of al-Sayyid's torture from al-Tuni.

32 See Middle East Watch, *Behind Closed Doors: Torture and Detention in Egypt* (Human Rights Watch: July 1992).

33 MEW interview, Assyut, February 1993.

34 Chris Hedges, "7 Executed in Egypt In Sharp Crackdown On Islamic Militants," *The New York Times*, July 9, 1993.

35 The other incidents occurred between February and April 1993, and included the bombing of five empty tourist buses in the parking lot outside Cairo's Egyptian Museum on March 16.

36 MENA, May 15, 1993, as reported in FBIS, May 17, 1993, p. 20.

37 AFP, May 15, 1993, as reported in FBIS, May 17, 1993, pp. 20-21.

38 The court imposed death sentences on the following defendants: Mustafa Hasan Hamzah (*in absentia*), Ramadan Shalaqani, Ibrahim Sayyid Abd-al-'Al, Ahmad Husayn al-Husayni, Tariq Abd-al-Raziq Hasan, and Ashraf al-Sayyid Ibrahim.

39 MENA, May 27, 1993, as reported in FBIS, May 27, 1993, p. 11.

40 Chris Hedges, "A Military Court in Egypt Gives Death Sentences to Six Militants," *The New York Times*, May 28,

1993.

41 This right is set forth in Article 14(5) of the International Covenant on Civil and Political Rights, to which Egypt is a party.

42 The role of the Court of Cassation in Egypt's legal system is as follows: "Final judgments rendered by Courts of Appeal in criminal and civil litigation may be petitioned to the Court of Cassation by the Defendant or the Public Prosecutor in criminal litigation and by any of the parties in interest in civil litigation on grounds of defective application or interpretation of the law as stated in the challenged judgment, on grounds of irregularity of form or procedure, or violation of due process, and on grounds of defective reasoning of judgment rendered. The Court of Cassation is composed of the President, 41 Vice-Presidents and 92 Justices." (Europa Publications Ltd., *The Middle East and North Africa 1992*, London: 1991, p. 421.)

43 Resolution 1984/50 of May 25, 1984.